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Guide to the

Registration of Companies

Published for the

FEDERAL MINISTRY OF COMMERCE AND INDUSTRY

by the

FEDERAL MINISTRY OF INFORMATION, NIGERIA

1960

Price 1 -

This Guide has been prepared by the Federal Ministry of Commerce and Industry to help businessmen to understand the principles and procedure relating to the Registration of Companies. It is emphasised that the Guide is published for information only and has no legal force.

GUIDE TO THE REGISTRATION OF COMPANIES

MEANING OF COMPANY

A company is an association of two or more persons (or seven or more in the case of a public company) who join together for any lawful purpose in accordance with the requirements of the Companies Ordinance (Cap. 37)* and form an incorporated company with or without limited liability. A company in this context is a person at law (sometimes referred to as a corporation aggregate) which can sue and be sued and which can own property which is distinct from that owned by its members. The liability of its members may, according to the nature of its constitution, be limited by guarantee or by shares or it may be unlimited.

Section 3 of the Ordinance makes reference to companies which are formed in pursuance of some Act of Parliament or of letters patent. This Guide refers only to those which are likely to be registered in Nigeria, namely—

- (i) companies limited by shares;
- (ii) companies limited by guarantee; and
- (iii) unlimited companies.

Companies limited by shares may be either—

- (i) private companies which are normally formed to enable a number of traders to carry on a business which they control and whose profits they share even though the business has been personified by incorporation and its liability has been divorced from that of its members. Such companies must, by their Articles of Association, restrict the transfer of shares, limit the number of members to fifty (except in certain circumstances) and prohibit any invitation to the public to subscribe for any shares or debentures; or
- (ii) public companies which are normally formed to enable the investing public to share in the profits of an enterprise without taking any part in the management. Such companies usually have no limitation as to the number of members and, by their Articles of Association, make provision for the transfer of shares and for subscriptions from the public.

Companies limited by guarantee may be registered with or without a share capital. In the former case, each member is liable to contribute the full nominal value of his shares and also, on the liquidation of the company,

*The marginal references are those of the applicable sections of the Companies Ordinance.

provided he is still a member or less than a year has elapsed since he ceased to be one, to contribute to the assets of the company such sum as may have been specified in the Memorandum of Association. In the latter case, each member is liable only for the contribution specified in the Memorandum.

Limitation by guarantee in Nigeria usually applies only to concerns which are formed for some purpose not involving the making of profit by the company or its individual members, and which deem it more appropriate to register without a share capital. Accordingly, this Guide deals only with the registration of such concerns, with particular reference to the formation of Chambers of Commerce, Trade Associations and the like.

Unlimited companies, as the name implies, are those registered without any limitation as to the personal liability of their members. Such companies may be registered with or without a share capital, although the latter form is more common when the company is established for purposes of trade.

HOW TO REGISTER

Applications for registration must be made to the Registrar of Companies, c/o Federal Ministry of Commerce and Industry, Lagos, and must be supported by the following documents—

- (i) a copy of the Memorandum of Association, duly stamped by a Commissioner of Stamp Duties, signed and witnessed (in the case of a company limited by guarantee the written sanction of the Attorney-General of the Federation must first have been obtained);
- (ii) a printed copy of the Articles of Association (this is not essential in the case of a public company having a share capital which wishes to adopt *without modification* the regulations in Table "A" in the First Schedule to the Companies Ordinance);
- (iii) a statement of nominal capital (this is required under the provisions of the Stamp Duties Ordinance and its purpose is to show that duty has been paid at the appropriate rate. This statement is, of course, only required if the company is being registered with a share capital);

Form C.O.1

- ec. 19(2) (iv) a statutory declaration that the requirements of the Ordinance have been complied with;

Form C.O.6

- ec. 64(2) (v) a notice of the situation of the registered office.

In addition to the above, a company other than a private company is normally required to submit—

- ec. 75(2) (vi) a list of the persons who have consented to be directors (each person so consenting must also sign and file with the Registrar a consent in writing to act as a director).
- ec. 75(2)(a)

Provided that the above documents are in order and that the appropriate fees and duties have been paid, the Registrar will then issue a Certificate of Incorporation. In the case of a private company this Certificate entitles the company to commence business, but a company

having a share capital and which is not a private company must also, before it can commence business, file with the Registrar a statutory declaration regarding the issue of and payment for the shares of the company and, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, a statement in lieu of prospectus. If these are in order the Registrar will then issue a second Certificate authorising the company to commence business. Sec. 94(1)(c) Sec. 94(2)

MEMORANDUM OF ASSOCIATION

The Memorandum of Association of a company is, in effect, a charter which sets out the objects for which it has been formed and contains certain specific statements of fact. The Memorandum must (except where otherwise indicated below) state—

- (i) the name of the company with ' Limited ' as the last word (except that an unlimited company and an Association duly licensed by the Registrar need only state the name);
- (ii) the objects of the company;
- (iii) that the liability of the members is limited (except in the case of an unlimited company);
- (iv) the amount of share capital and how it is divided (except in the cases of companies registered without a share capital and unlimited companies whether or not they have a share capital);
- (v) the amount each member undertakes to contribute to the assets of the company in the event of its being wound up (applicable only in the case of a company limited by guarantee).

The Memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

The Memorandum must be subscribed to by two or more persons (in the case of a private company) or by seven or more persons (in the case of any other form of company). No subscriber may take less than one share (where the company has a share capital) and each subscriber must write opposite to his name the number of shares he takes.

A company and its members are bound to observe all the provisions of the Memorandum and they must be particularly careful that none of their acts is contrary to the stated objects. Once the Memorandum has been registered with the Registrar, it may only be amended in the following respects— Sec. 16(1)

- (i) the name of the company may be changed with the written approval of the Registrar; Sec. 10(4)
- (ii) the objects of the company may, subject to the prior confirmation of the court, be altered so as to enable it to carry on its business more economically or more efficiently, or to attain its main purpose by new or improved means, or to enlarge or change the local area of its operations, or to carry on some business which in existing circumstances may conveniently or advantageously be combined with the business of the company, or to restrict or abandon any of the objects specified in the Memorandum; Sec. 11

- Sec. 43(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its Memorandum in the following respects—
- (iii) the share capital may be increased and all or any part may be consolidated and divided into shares of larger amount than its existing shares;
 - (iv) all or any of its paid-up shares may be converted into stock and re-converted into shares of any denomination;
 - (v) all or any of its shares may be subdivided into shares of smaller amount (this power must be exercised by special resolution);
 - (vi) the shares which have not been taken or agreed to be taken by any person may be cancelled and the amount of the share capital reduced by a like amount;
- Sec. 48 A company limited by shares, if so authorised by its articles, may—
- Sec. 49 (vii) reduce its share capital, if a special resolution to that effect is confirmed by the court.

ARTICLES OF ASSOCIATION

The Articles of Association of a company are, in effect, the regulations governing its conduct as they indicate the rights of the members and the manner in which the company is to be governed. Model articles have been drawn up for the guidance of companies and are contained in Table 'A' in the First Schedule to the Companies Ordinance.

The whole of Table 'A' may be adopted by a public company limited by shares which wishes to apply all the regulations without modification to its own affairs, and, in such event, the company is not obliged to re-print the articles for registration with the Registrar.

Other companies limited by shares cannot adopt Table 'A' without modification and are therefore obliged to prepare their own articles. In such cases, unless the regulations in Table 'A' are expressly excluded or modified, those regulations shall, so far as applicable, be the regulations of the company.

In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered. If the company does not have a share capital, the articles must state the number of members with which the company proposes to be registered. Model regulations for such companies are contained in the Third Schedule to the Ordinance as—

Form B—Company limited by guarantee and not having a share capital.

Form C—Company limited by guarantee and having a share capital.

Form D—Unlimited company having a share capital.

Sec. 14 Articles of Association must be printed, divided into consecutively numbered paragraphs, bear the same stamp as if they were contained in a deed, and signed by each subscriber of the Memorandum of Association in the presence of at least one witness who must attest the signature. They must also be delivered to the Registrar for registration and retention.

Sec. 15 Articles of Association may be altered or added to in any way consistent with the Memorandum of Association.

REGISTRATION FEES AND DUTIES

A company having a share capital has to pay the following—

(1) To the Registrar—

In respect of registration (subject to a maximum of £50)
where the nominal capital does not exceed £2,000 £2

OR where the nominal capital exceeds £2,000:

for every £1,000 or part up to £5,000 £1
for every £1,000 or part after the first £5,000 and up to
£100,000 5s.
for every £1,000 or part after the first £100,000 1s.

In respect of the registration of documents
for every document required to be registered 5s.

(2) To a Commissioner of Stamp Duties—

for every £100 or part of the nominal share capital 10s.
in respect of the Memorandum of Association £1
in respect of the Articles of Association £1

Example

A private company registering with a nominal share capital of £5,000
would have to pay—

	£	s.	d.
To the Registrar			
Registration fees on capital	5	0	0
Registration of documents:			
(a) Memorandum of Association	0	5	0
(b) Articles of Association	0	5	0
(c) Statement of nominal capital	0	5	0
(d) Statutory declaration of compliance	0	5	0
(e) Notice of situation of registered office	0	5	0
Certificate of Incorporation	0	5	0
To a Commissioner of Stamp Duties			
Stamp duty on nominal capital	25	0	0
Stamp duty on Memorandum of Association	1	0	0
Stamp duty on Articles of Association	1	0	0
Total	£33	10	0

A company not having a share capital has to pay the following—

In respect of registration (subject to a maximum of £20)
where the number of members does not exceed 20 £2

OR where the number of members is more than 20 but does not
exceed 100 5s.
where the number of members exceeds 100 but is not stated to
be unlimited, the above fee of £5 plus 5s. for every 50 members
or part after the first 100

OR where the number is unlimited £20

The scale of fees in respect of the registration of documents and stamp
duties is identical with that payable by a company having a share capital,
except that there is no stamp duty to be paid on the nominal share capital

Example

A trade association registering without a share capital and with 150 members would have to pay—

				£	s.	d.
To the Registrar						
Registration fees on membership	...	...	...	5	5	0
Registration of documents—						
(a) Memorandum of Association	...	...	...	0	5	0
(b) Articles of Association	...	...	...	0	5	0
(c) Statutory declaration of compliance	...	...	...	0	5	0
(d) Notice of situation of registered office	...	...	...	0	5	0
Certificate of Incorporation	...	...	...	0	5	0
To a Commissioner of Stamp Duties						
Stamp duty of Memorandum of Association	...	...	...	1	0	0
Stamp duty on Articles of Association	...	...	...	1	0	0
Total	...	...	...	£8	10	0

NAMES OF COMPANIES

Sec. 10

The Ordinance lays down certain names which may not be used by companies and those which may not be used without the consent of the Federal Minister of Commerce and Industry. It is, therefore, in the interests of the persons forming a company to ascertain from the Registrar (a fee of 1s. is charged) whether the proposed name is available or can be used before they go to the trouble and expense of drawing up the Memorandum and Articles of Association.

Names which cannot be registered are those which are identical to or closely resemble that of a company already in existence; contain the words 'Chamber of Commerce' (unless the company is to be registered under section 22 of the Ordinance without the addition of the word 'Limited' to its name); contain the words 'Building Society'.

Names which cannot be registered except with the consent of the Minister are those which include the words 'Imperial', 'Royal', 'National', 'Government', or other words which the Registrar considers likely to suggest that the company enjoys the patronage of Her Majesty the Queen or other member of the Royal Family or of the Imperial Government or of the Government or any Government Department; contain the words 'Municipal' or 'Chartered' or other word which the Registrar considers likely to suggest that the company is connected with any Municipal or other local authority or with any society or body incorporated by Royal Charter; or contain the word 'Co-operative'.

COMPANY ROUTINE

Having fulfilled all the conditions described in the foregoing sections of this Guide and been authorised to commence business, there are certain things which a company is obliged to do and others which it is not allowed to do. The more important of these are listed below—

What a company is obliged to do—

(1) Maintain a registered office and notify the Registrar of any change.

(2) Publish its name by—

(a) painting or affixing the name on the outside of every office or place in which business is carried on,

- (b) engraving the name on its seal;
- (c) mentioning the name in all notices, advertisements and other official publications, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, and in all bills of parcels, invoices, receipts and letters of credit.
- (3) Maintain a register of members, which must be—
 - (a) amended to take into account any transfer of shares; Sec. 27
 - (b) kept at the registered office of the company and be open to inspection by members and other persons. Sec. 30
- (4) Forward to the Registrar at least once a year a list of members and a summary in the manner set out in Form E of the Third Schedule to the Ordinance (applicable only to companies having a share capital). Sec. 32
- (5) Maintain at its registered office a register of its directors or managers, and send a copy to the Registrar and notify him of any change. Sec. 28
- (6) State the full names (and any former names) of its directors in all trade catalogues, trade circulars, showcards and business letters. Sec. 78(1)
- (7) Hold general and other meetings at the times and in the manner prescribed by the Ordinance. Sec. 79(1)
- (8) Forward a statutory report containing the prescribed particulars to every member and other entitled person and file a copy with the Registrar (applicable only to companies limited by shares which are not private companies). Sec. 56-72
- (9) Notify the Registrar of any changes in the capital structure (applicable only to companies having a share capital). Sec. 67(2)
- (10) File with the Registrar a signed copy of every prospectus issued by or on behalf of the company; or a statement in lieu of prospectus. Sec. 44, 46(a), 51
- (11) File with the Registrar a return of the allotments or a contract in writing, whichever is applicable; or, where the contract is not reduced to writing, the prescribed particulars of the contract (applicable only to companies limited by shares and making any allotment of its shares). Sec. 84, Sec. 87
- (12) Send to the Registrar for registration particulars of every mortgage or charge created by the company; and (applicable only to a limited company) keep a register of mortgages which must be open for inspection by creditors and members. Sec. 95(1), Sec. 95(2)

What a company cannot do

- (1) Change its name except with the consent of the Registrar. Sec. 101
- (2) Reduce its share capital unless so authorised by its articles and subject to a special resolution which has been confirmed by the court. Sec. 102
- (3) Otherwise alter its Memorandum of Association except as provided in section 11 and 42 of the Ordinance. Sec. 103
- (4) Operate with less than two directors in the case of a public company or one in the case of a private company. Sec. 104
- (5) Carry on business with less than the legal number of shareholders in the case of a private company, seven in the case of any other company. Sec. 105

- Sec. 16(1) (6) Do any act which is contrary to the provisions of its Memorandum and Articles of Association.

WINDING-UP

- Sec. 129 The winding-up of a company may be either—

- (a) by the court; or
- (b) voluntary; or
- (c) subject to the supervision of the court.

In general, members of a company limited by shares which is being wound up are not required to make any contribution in excess of the amount unpaid on their shares. Similarly, in the case of a company limited by guarantee, the maximum amount that members can be made to contribute is that which they originally undertook to contribute to the assets of the company in the event of its being wound up plus, if the company has a share capital, the amount unpaid on their shares.

- Sec. 135 A company may be wound up by the court:

- (a) if it passes a special resolution that it should be so wound up;
- (b) if it fails to file the statutory report or to hold the statutory meeting;
- (c) if it does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) if the number of members is reduced below two in the case of a private company or below seven in the case of any other company;
- (e) if it is unable to pay its debts;
- (f) if the court is of the opinion that it is just and equitable that the company should be wound up

- Sec. 181 A company may be wound up voluntarily:

- (a) when the period fixed for its duration by the Articles expires, or when an event occurs which makes the company liable to dissolution by its articles;
- (b) if it so resolves by special resolution;
- (c) if it resolves by extraordinary resolution that it is advisable to wind up as it cannot by reason of its liabilities continue its business.

- Sec. 198 A company may be wound up subject to the supervision of the court when it has by special or extraordinary resolution resolved to wind up voluntarily and the court has made an order that such winding-up shall continue but subject to such supervision of the court and such terms and conditions as the court thinks just.

The provisions of the Ordinance in regard to the winding-up of companies are too complex to be compressed into the short space available in this Guide and readers wishing to make a further study of the matter are accordingly referred to Part IV of the Companies Ordinance.

FORMS

Statutory forms such as C.O.1, C.O.6, C.O.7 and Form E referred to in this Guide are normally on sale from the Federal Government Printer, Lagos or from the larger bookshops. They are not obtainable from the Registrar of Companies.

Published Quarterly
JANUARY - APRIL - JULY - OCTOBER

Price 2/6 per copy

Each issue contains special feature articles on Nigerian activities in the fields of industry and commerce and the following regular items:—

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Cheques or postal orders to be made payable to *Federal Government* and sent to the Commercial Publications Section, Federal Ministry of Information, Lagos.

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Cheques on a British bank or International money orders to be made payable to *The Crown Agents for Oversea Governments and Administrations* and sent to The Crown Agents for Oversea Governments and Administrations (ref.O/Misc.234/10), 4, Millbank, London, S.W.1.

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Published by the
FEDERAL MINISTRY OF INFORMATION, LAGOS

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Commerce and Industry**

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